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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Brooks

Art Unit 2859

Serial No. 10/685,059

Filed October 14, 2003

Confirmation No. 5710

For FOOTWEAR SCANNING AND MEASUREMENT SYSTEM AND METHOD

Examiner Tania C. Courson

BRIEF FOR APPELLANT

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For FOOTWEAR SCANNING AND MEASUREMENT SYSTEM AND METHOD
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Art Unit 2859

September 7, 2005

BRIEF FOR APPELLANT

This is an appeal from the final rejection of the claims of the above-identified application made in the Office action mailed April 12, 2005. A Notice of Appeal was filed in the Patent Office on July 8, 2005.

I. Real Party in Interest

The real party in interest in the present appeal is Jeffrey S. Brooks, Inc. of Creve Coeur, Missouri, a corporation of the State of Missouri, owner of a 100 percent interest in the pending application.

II. Related Appeals and Interferences

Appellant, appellant's legal representative and the assignee are unaware of any other appeals or interferences which would directly affect, which would be directly affected by, or which would have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

Claims 1-22 are pending in the application. Claims 1-2, 8, and 10-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,025,476 (Gould et al.) in view of U.S. Pat. No. 2,399,424 (Bliss). Claims 3 and 9 are rejected

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under 35 U.S.C. § 103(a) as being unpatentable over Gould et al. in view Bliss and further in view of U.S. Pat. No. Des. 329,322 (Wartell) and U.S. Pat. No. 4,064,641 (Levine).

The rejection of claims 1-22 is being appealed. Copies of the claims being appealed are attached hereto as Appendix A.

IV. Status of Amendments

No amendments have been filed subsequent to the final rejection.

V. Summary of Invention

The following summary is provided in accordance with M.P.E.P. § 1206 and correlates claim elements to specific embodiments described in the application specification. Consistent with M.P.E.P. § 1206, the following summary does not in any manner whatsoever limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

The present invention is directed to a system for measuring the size of a foot. The system comprises a) a support surface (e.g., surface 12 on platform 16 in Fig. 1) having an opening (e.g., 24 in Fig. 3) therein, b) a fixture (e.g., 30) positioned over the opening having a cavity (e.g., 36 in Fig. 3) suitable for receiving a foot to be measured, and c) an imaging device (e.g., 14) positioned relative to said opening to produce an image (e.g., 54 in Fig. 5) of a bottom surface of the foot superimposed on foot measuring indicia (e.g., 44 in Fig. 5) visually indicative of foot size. The system may also include an actuator (e.g., 23) on a platform for operating the imaging device.

The present invention is also directed to a method of measuring the size of a person's foot, comprising the steps of a) placing the foot of a person into a fixture positioned over a

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transparent window, b) scanning a bottom surface of the foot through the window to produce an image of the foot superimposed on foot measuring indicia visually indicative of foot size, and c) displaying the image (e.g., see ¶ 22 of the specification). The method may also include the step of using the image to select a properly sized pair of shoes.

VI. Issues

The issues presented on appeal are as follows:

1. Whether Claims 1-2, 4-8, and 10-22 satisfy 35 U.S.C. § 103 over Gould et al. in view of Bliss where the references neither disclose nor suggest the claimed invention.
2. Whether Claims 3 and 9 satisfy 35 U.S.C. § 103 over Gould et al. in view of Bliss and further in view of Wartell and Levine where the references neither disclose nor suggest the claimed invention.

VII. Grouping of Claims

For the purposes of this Appeal, appellant will argue the allowability of all claims as one Group such that all claims stand or fall together.

VIII. Argument

A. The Office has Failed to Establish that Claims 1-2, 4-8 and 10-22 are Obvious over Gould et al. in view of Bliss and that Claims 3 and 9 are Obvious over Gould et al. in view of Bliss and Further in view of Wartell and Levine

Claim 1 stands rejected under 35 U.S.C. § 103 as being obvious in view of U.S. Patent Nos. 2,399,424 (Bliss) and 5,025,476 (Gould et al.). Claim 1 is directed to a system for

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measuring the size of a foot comprising a) a support surface having an opening therein, b) a fixture positioned over the opening having a cavity suitable for receiving a foot to be measured, and c) an imaging device positioned relative to said opening to produce an image of a bottom surface of the foot superimposed on foot measuring indicia visually indicative of foot size.

Applicant submits that the Examiner's rejection is clearly erroneous. In particular, Applicant disagrees on the ground that one of ordinary skill would not be motivated to modify Gould et al. in light of Bliss in the manner suggested by the Examiner. For the reasons stated below, Applicant respectfully submits that the pending claims in their current form are patentable over the prior art of record, including Gould et al. and Bliss.

Gould et al. describes an apparatus comprising a light source (28), grating (41), camera (46), and computer (not shown). The light from the light source passes through the grating at an angle and strikes the foot, producing shadow lines on the bottom of the foot. (Col. 4, line 48). The camera is positioned to view the foot through the grating. Because the light source strikes the grating at a first direction (38), which is different from the direction (48) at which the camera views the foot, the shadow lines interfere with the straight lines of the grating to produce a fringe pattern, as shown in Fig. 5 and described in col. 5, lines 31-35. A snapshot image from the camera (showing the fringe pattern) is downloaded on the computer in digital form. (Col. 6, lines 10-19.) The computer analyzes the image (using the pixels of the digital image) to extract information about the foot to develop an entire topography of the foot for use in designing an orthotic. (Col. 11, lines 62-68; col. 2, lines 4-7.)

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As recognized by the examiner, Gould et al. fails to disclose an image of the foot superimposed on foot measuring indicia visually indicative of foot size. All claims of this application include this requirement.

Bliss describes an apparatus comprising an X-ray cassette (27) or screen (36) for fluoroscopy laid on a solid platform (15). The cassette and screen have scales for showing foot size. In use, the cassette (27) or screen (36) is either placed on the platform (15) or underneath the platform, and X-rays are passed down through the feet of a person to produce an image of the foot (i.e., outline of feet and bone structure). There is no opening in the platform (15), and the device does not produce an image of the bottom surface of the foot. Instead, what is produced is an outline of the feet and of bone structure, superimposed on the scale. (Col. 1, lines 41-45).

It is the examiner's position that it would be obvious in view of Bliss to modify the apparatus in Gould et al. to include a scale (presumably on the grating), and that such a scale would provide foot measuring indicia superimposed on the bottom of the foot visually indicative of foot size. Applicant respectfully disagrees on the ground that one of ordinary skill would not be motivated to make such a modification.

Before a conclusion of obviousness may be made based on a combination of references, there must have been a reason, suggestion, or motivation to lead an inventor to combine those references. Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573 (Fed. Cir. 1996). Such suggestions may come (1) expressly from the references themselves, (2) from knowledge of those skilled in the art that certain references, or disclosures in the references, are known to be of special interest or importance in the particular field, and (3) from the

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nature of a problem to be solved, leading inventors to look to references relating to possible solutions to that problem. Id.

Here, the references do not expressly make any suggestion of combination together. There is no reason to believe the Gould et al. and Bliss references are known to be of special interest in the particular field. The nature of the problem to be solved, a system for measuring foot size, also does not suggest combination of the references because Gould et al. includes a system for measuring foot size using computer analysis thus making the scale disclosed in Bliss unnecessary.

In this regard, the apparatus in Gould et al. uses shadow lines, cameras and computer analysis to measure various foot size characteristics. One skilled in the art would not be motivated to use a scale visually indicative of foot size in the Gould et al. device because any such scale would have no purpose in the device. The computer does not need such a scale visually indicative of foot size to measure foot size. Instead, the computer measures foot size, among many other characteristics, by digital analysis of the downloaded camera image of the foot. A visual scale for the purpose of determining foot length would be entirely superfluous. Further, as previously noted, Gould et al. uses a computer to determine the entire topography of a foot, including height and shape information. A scale visually indicative of foot size would not satisfy this need, further reinforcing the notion that any such scale would have no value in Gould et al.

For all of the above reasons, claim 1 is submitted as patentable over the references of record, including Gould et al. and Bliss, because one skilled in the art would not be motivated to make the modification of Gould et al. in light of Bliss. One skilled in the art would not be motivated to make the modification because Gould et al. uses computer analysis to

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measure foot size, thus making a visual scale 9 (or other visual indication of foot size) unnecessary.

Claims 1-2, 4-8, and 19-22, which were rejected for essentially the same reason as claim 1, are submitted to be patentable over the references of record for at least the same reasons as claim 1.

Claims 3 and 9 depend, either directly or indirectly, from claim 1 and are believed to be patentable for at least the same reasons as claim 1. Wartell and Levine clearly fail to overcome the shortcomings of Gould et al. and Bliss as applied to claim 1.

Claims 11-18 are method claims, each of which requires the steps of a) placing the foot of a person into a fixture over a transparent window, and b) scanning a bottom surface of the foot through the window to produce an image of the foot superimposed on foot measuring indicia visually indicative of foot size. The examiner has rejected these claims as obvious over Gould et al. and Bliss for essentially the same reasons as claim 1. For the reasons stated above, it is submitted that there is no motivation to combine the references in the manner suggested by the examiner, and that method claims 11-18 are thus allowable.

In view of the foregoing, favorable consideration and allowance of claims 1-22 is respectfully requested.

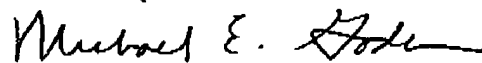
IX. Conclusion

The rejections of the claims on appeal are in error for the reasons set forth above. Therefore, appellant requests that the Examiner's rejections of claims 1-22 be withdrawn.

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* The Commissioner is hereby authorized to charge Deposit Account No. 19-1345 in the amount of \$250.00 for the appeal brief fee under 37 CFR 41.20 (b)(2). Any additional fee may be charged to Deposit Account No. 19-1345.

Respectfully submitted,



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Via Facsimile 571-273-8300

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APPENDIX A

PENDING CLAIMS ON APPEAL

1. (Previously amended) A system for measuring the size of a foot, the measuring system comprising:
a support surface having an opening therein;
a fixture positioned over the opening having a cavity suitable for receiving a foot to be measured; and
an imaging device positioned relative to said opening to produce an image of a bottom surface of the foot superimposed on foot measuring indicia visually indicative of foot size.

2. (Original) The measuring system of claim 1 wherein the fixture is shaped like a shoe.

3. (Original) The measuring system of claim 2 wherein the fixture is a multicolored clown shoe.

4. (Original) The measuring system of claim 1 wherein the support surface has a transparent window covering the opening.

5. (Previously amended) The measuring system of claim 4 wherein the foot measuring indicia comprises a scale indicating foot size imprinted on the window.

6. (Original) The measuring system of claim 1 wherein the imaging device is an optical scanner configured to produce the image by scanning the foot through the opening.

7. (Original) The measuring system of claim 6 wherein the image is a scanned image of the bottom surface of the foot and the foot measuring indicia.

8. (Original) The measuring system of claim 1 wherein said support surface comprises a raised platform above the imaging

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device, and wherein said system further comprises an actuator on the raised platform for operating the imaging device.

9. (Original) The measuring system of claim 1 wherein the fixture comprises a cuff configured fit snugly against the leg or ankle of the person whose foot is in the fixture to substantially prevent ambient light from entering the fixture.

10. (Original) The measuring system of claim 1 wherein said imaging device is operable to print said image.

11. (Previously amended) A method of measuring the size of a person's foot, the method comprising:

placing the foot of a person into a fixture positioned over a transparent window;

5 scanning a bottom surface of the foot through the window to produce an image of the foot superimposed on foot measuring indicia visually indicative of foot size; and displaying said image.

12. (Previously amended) A method of measuring the size of a person's foot according to claim 11 wherein the foot measuring indicia comprises a scale indicating foot size marked on the window.

13. (Original) A method of measuring the size of a person's foot according to claim 11 wherein displaying the image comprises printing said image.

14. (Original) A method of measuring the size of a person's foot according to claim 11 wherein placing the foot includes placing the foot into fixture shaped like a shoe.

15. (Previously amended) A method of selecting a properly sized pair of shoes, said method comprising:

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placing the foot of a person into a fixture positioned over
a transparent window;

5 scanning a bottom surface of the foot through the window to
produce an image of the foot superimposed on foot measuring
indicia visually indicative of foot size;
printing said image; and
using the image to select a properly sized pair of shoes.

16. (Original) A method of measuring the size of a person's
foot according to claim 15 wherein the foot measuring indicia are
marked on the window.

17. (Original) A method of measuring the size of a person's
foot according to claim 15 wherein displaying the image comprises
printing said image.

18. (Original) A method of measuring the size of a person's
foot according to claim 15 wherein placing the foot includes
placing the foot into a fixture shaped like a shoe.

19. (Previously amended) A system for measuring the size of
a foot, the measuring system comprising:

a platform comprising a support surface having an opening
therein;

5 an imaging device positioned relative to said opening to
produce an image of a bottom surface of the foot superimposed on
foot measuring indicia visually indicative of foot size; and
an actuator on the platform for operating the imaging
device.

20. (Previously amended) The measuring system of claim 19
wherein the support surface has a transparent window covering the
opening and the foot measuring indicia comprises a scale
indicating foot size imprinted on the window.

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21. (Previously added) The measuring system of claim 1 wherein said foot measuring indicia is a scale marked to indicate foot size.

22. (Previously added) The measuring system of claim 21 wherein said scale includes numbers corresponding to different foot size.